

RATIO DECIDENDI

Ratio is the reason for what?

It's binding on all future judges in similar?

Reversing is what?

Whereas over-ruling is ...?

And distinguishing is ...?

Ratio is NOT binding if:

too obscure

made per incuriam

in conflict with basic principle of law

in conflict with EU law

too wide

made in an inferior court

PROCEDURE FOR PASSING A BILL INTO STATUTE

- G
- W
- F
- S
- C
- R
- T
- S
- R



RULES FOR STATUTORY INTERPRETATION

- L
- G
Case?
- M
Case?
- E G
Case?
- Expressio
- Noscitur
- In pari
- Purposive approach
- Conflict with EU

AIDS TO INTERPRETATION

Intrinsic

- title
- name
- preamble
- interpretation section
- margin notes

Extrinsic

- reports of committees
- Hansard
- dictionary
- books of authority



DISTINGUISH INVITATIONS FROM OFFERS

- invitations cannot be accepted
- invites another person to make an offer

- Boots

- Birds

- Bells

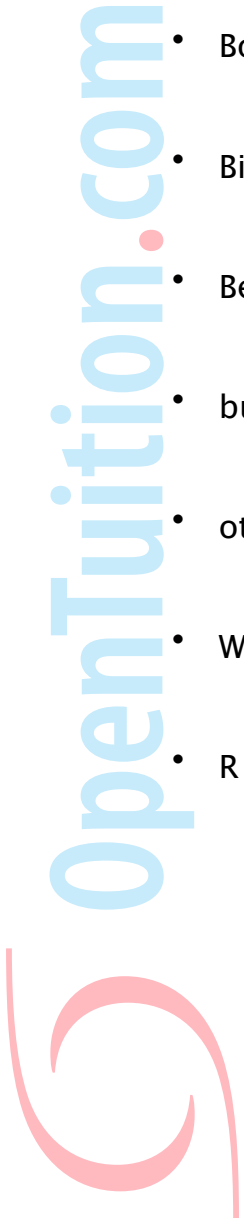
- but Balls

- other “reward”

cases?

- W v C

- R v C



OFFERS

- half of the “agreement”
- an expression of willingness to be bound on specific terms
- must be certain
- must still exist
- not an invitation
- not a statement of intent
- not a request for information
- nor a response to a request for information
- revocation must actually be communicated to the offeree
- may be made to the World at large



TERMINATION OF OFFER

- at any time before acceptance
- postal rule DOES NOT apply
- revoked (maybe through a reliable third party) case?
- lapse of time case?
 - Rejection case?
- refusal to accept
- counter offer case?
- death (for personal services)
- notification of death (for non-personal services) case?
- failure of a condition precedent
- acceptance

ACCEPTANCE

- other half of the agreement
- complete and unconditional
- cannot vary terms of the offer case?
- offer must still be open case?
- must be communicated unless case?
- communication through reliable third party case?
- silence? case?
- may be by conduct case?
- once you've started the acts of acceptance case?
- must be made within a reasonable time case?
- postal rule DOES apply case?

CONSIDERATION

- every contract must be supported, except?
- it's a two-way thing, unless ...?
- Currie v Misa definition
- Dunlop v Selfridges definition
- executed
- executory
- past cases?
- must be legal and possible
- courts may imply a promise to pay a reasonable sum case?
- must be sufficient, but
- need not be adequate case?

MORE CONSIDERATION

- must have some value case?

- not sufficient if in accordance with
 - natural duty already owed case?

 - legal duty already owed case?

 - contractual duty already owed case?

- is sufficient if over and above
 - natural duty already owed case?

 - legal duty already owed case?

 - contractual duty already owed case?

PRIVITY OF CONTRACT

- only the parties to a contract have any legal rights under the contract

- exceptions:
 - motor insurance

 - principal / agent

 - holder in due course

 - executor

 - beneficiary / trustee

 - consumer / manufacturer

 - employer / employee

 - collateral contracts



PINNELL AND ITS EXCEPTIONS

- part payment of a debt does not get full discharge
- exceptions:
 - receiving something to which you were not already entitled
 - goods instead of cash
 - something different in kind
 - early settlement
 - creditors' arrangement
 - payment by someone else
 - different location
 - promissory estoppel

case?



INTENTION TO CREATE LEGAL RELATIONS

- commercial / family
- family – husband and wife / other family
- husband and wife – living together / living apart
- together cases?
- apart case?
- other family cases?
- binding in honour only?



TERMS IN A CONTRACT

- condition case?
- warranty case?
- innominate case?
- what happens if a term is breached?
- condition case?
- warranty case?
- innominate case?



MORE ON CONTRACTUAL TERMS

- express or implied?

- implied by statute
 - title

 - quality

 - fit for purpose

 - sample

 - description

- implied by courts
 - business efficacy

 - custom

 - course of trade



EXCLUSION CLAUSES

- must be communicated
- at the time the contract is entered into
- oral statements can destroy effect of exclusion clause
- course of trade – other party may be deemed to be aware
- any ambiguity will be read strictly against the party trying to enforce the exclusion
- can exclude for fundamental breach
- exclusion clause must be fair / reasonable
- “reasonable” takes account of
 - relative bargaining power
 - any inducement offered
 - trade custom
 - goods made to special order or sold from stock
 - fair treatment of the consumer by the seller
 - extent of ability to cover by insurance

BREACH OF CONTRACT

- “during” or “anticipatory”

- innocent party can:
 - sue immediately case?

 - ignore breach notification and continue with own contractual obligations case?

 - wait, and hope other party changes their mind case?

DAMAGES – REMOTENESS AND MEASUREMENT

- compensation, not punishment
- only awarded if “within the reasonable contemplation of the ordinary man “
- so, reasonably foreseeable
- loss suffered should be as a natural consequence of the breach or ...
- ... breacher was aware of the special circumstances of the other party
- cases?
- measurement – courts will usually measure the amount as that amount necessary to put the injured party into the position they would have been in without the breach
- may take account of speculative loss case?
- or may not case?
- may take account of non-financial loss case?
- or may not case?
- if cost of repair case?
- injured party should try to mitigate the loss

REMEDIES FOR BREACH

- damages
- action for price
- quantum meruit
- sp
- in
- re
- re
- Ma
- liquidated damages

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TORT

- for F4, negligence and passing-off (in company law)
- for negligence, need to prove / show five points:
 - existence of a duty of care
 - breach of that duty
 - reliance on the negligent statement / act
 - financial loss suffered
 - loss suffered is as a result of reliance
- existence of a duty of care
 - courts have distilled this into a three step process
 - reasonable foreseeability
 - proximity
 - fair, just and reasonable to impose a duty of care
- breach of the duty
 - greater degree of care needed if risk is higher
 - courts take into account:
 - seriousness of the risk
 - costs of avoidance
 - standard practice
 - social benefit

NEGLIGENT ACCOUNTANTS

- Jeb Fasteners v Marks Bloom

- Caparo v Dickman

- ADT v BDO



EMPLOYMENT LAW

- contract of service or contract for services

- courts apply three tests
 - control test case?

 - integration test case?

 - economic reality test case?

- courts take into account
 - t

 - d

 - h

 - a

 - h

 - p

 - d

DISMISSAL

- 4 types
 - summary
 - constructive
 - wrongful



- unfair

REDUNDANCY



AGENCY

- created by:
 - express agreement
 - implied relationship
 - subsequent ratification
 - estoppel
 - necessity
- authority may be:
 - express
 - implied
 - apparent / ostensible



TERMINATION OF AGENCY RELATIONSHIP

- death of principal or agent
- insanity of either
- principal becomes bankrupt

LIABILITY OF AGENT

- within authority? No liability
- but MAY be held liable by the court
 - enter contract without disclosing agency status
 - acting on own behalf
 - trade custom

PARTNERSHIP

- typical contents of a partnership agreement
 - a
 - d
 - d
 - c
 - i
 - s
 - c
 - g
 - t



PARTNERSHIP

- 1890 Act

- m

- e

- d

- i

- c

- s

- i

- n

- b

- e

- d



PARTNERSHIP DISSOLUTIONS

- d
- i
- s
- s
- o
- l
- u
- t
- i
- o
- n
- s



COMPANY LAW

ADVANTAGES OVER A PARTNERSHIP

- s l e
- l l
- p e
- o o p
- n o m
- t o i
- r f
 - f c
 - o t p



DISADVANTAGES

- expense
- publicity
- compliance



LIFTING THE VEIL

Cases?

- G v H
- D v C T
- E v W G
- R v O
- Re F G F
- wrongful trading
- fraudulent trading
- no trading certificate
- abuse of company name

ARTICLES CONTRACTUAL FORCE

- binds members to co case?
- and company to members case?
- and members to members case?
- but not to third parties, even though they may be a member case?

ARTICLES ALTERABILITY

- for the benefit of the company as a whole
- individual hypothetical member of the future

- cases?

G v A C

S F v S

A v G R of W A

D T v L S

defrauding director S v C

competing members S v K L

weighted voting rights B v F



CHOICE OF COMPANY NAME

- anything you want
- but there are restrictions:
- misleading or offensive:
- statute
- passing off

CHANGE OF NAME

- compulsory or voluntary
- special resolution:
 - majority
 - days notice
 - registrar



DIRECTORS

- definition
- shadow directors definition
- executive directors
- non executive directors and their role:
 - corporate governance
 - independent view
 - effective leadership
 - financial probity
 - watch over the executive directors



NUMBER AND ELIGIBILITY

- public companies
- private companies
- exclusions:
 - age
 - bankrupt
 - insane
- absences
 - CDDA



APPOINTMENT

- first – named in documents sent to registrar

- subsequent appointed by:
 - m

 - o d

 - c

 - l

 - a

- ordinary resolution

REMOVAL

- ORDINARY resolution
- Special NOTICE:
 - days notice

 - written representations

 - reasonable length

 - 100 * 100

STATUTORY DUTIES

- act
- perform
- promote
- independent
- avoid
- no
- disclose
- cases?



SECRETARY

- public companies
- appropriately qualified

- duties:
 - maintain
 - file
 - minutes
 - compliance
 - sign
 - assist in corporate governance
 - induction process for new directors
 - enable effective communication



STATUTORY BOOKS

- register of:
 - members
 - directors
 - secretary
 - mortgages and charges
 - debenture holders
 - directors' interests
 - substantial shareholdings

AUDITORS

- required – unless small company
- appointed by:
 - directors
 - members
 - Secretary of State
- appropriately qualified
- cannot be:
 - director or employee
 - partner or employee of above
 - bankrupt



RIGHTS AND DUTIES

RIGHTS

- access to company records
- information and explanations
- notice of meetings
- written representations
- written resolutions

DUTIES

- true and fair opinion
- report if misleading or inconsistent
- certain elements of remuneration report

MEETINGS

- annual general meeting
 - purpose:
 - formal
 - reappointment
 - reappointment
 - approval
 - timing
 - 18
 - 15
 - calendar year
- other general meetings
- class meetings

RESOLUTIONS

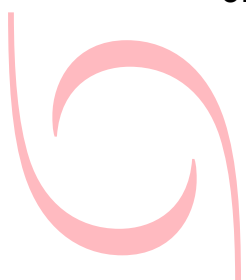
- special

- written

- ordinary

- ordinary with special notice

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LOAN CAPITAL

debentures

- secured or unsecured
- single or series

security may be:

- fixed
- floating

two debentures secured by same asset?

- fixed wins over floater

two the same secured by same asset?

- first registered wins
- unless

FIXED CHARGES

FLOATING CHARGES

Yorkshire Woolcombers case

- a charge on a class of assets of a company, present and future
- the class changes from time to time in the ordinary course of business
- the company is free to deal with these assets until the charge crystallises

DEBENTURES COMPARED WITH SHARES

- fixed rate of interest
- interest payable even though company making losses
- no votes
- secured (sometimes)
- preferential repayment in a liquidation
- take possession of the charged asset
- rights when the company defaults:
 - apply to court for a liquidation order
 - apply to court for an administration order
 - appoint a receiver



PREFERENCE SHARES COMPARED WITH EQUITY SHARES

- companies do not always have preference shares
- preference shares do not (normally) have voting rights
- preference shares may be convertible into equity later on
- preference carry a fixed rate of dividend
- preference receive ALL their capital back before equity in a liquidation
- preference do NOT share in a surplus on a liquidation
- preference dividends are shown as a finance charge in the income statement

